Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT AINITAL.

A.O.No. 1280 of 2001
(Old No. 454 of 1998)

State of U.P. through
Superintendent of Police,
Uttarkashi. ..... Opp.party/appellant

Versus

(1) Motor Accident Claims Tribunal/
District Judge, Tehri Garhwal,..... Respondent

(2) Kailash Chandra Joshi S/o Girija Dutt Joshi,
R/o 71/32 Bihari Lal Road, Dehradun.

.....Claimant/Respondent.

Learned Standing Counsel for the appellant-State,
Sri Ram Ji Srivastava & Sri R.Dobhal Advocates for respondent No.2.

Date: 25th Aug.,2004

Hon'ble P.C. Verma,J.,
Hon'ble B.S. Verma,J.

This appeal has been preferred against the judgment and order dated 16.12.1997 passed by Motor Accident Claims Tribunal, Tehri Garhwal in Motor Accident Claim Case No. 7 of 1990, whereby the Tribunal has decreed the claim petition of the petitioner for Rs. 3,46,313/- against the Opp.party.

2- Brief facts giving rise to this appeal are that petitioner Kailash Chandra Joshi suffered injuries in an accident occurred on 2.2.1990 at 5.30 P.M. by vehicle No. UPY 2335, Police Ambulance which was being driven by its driver rashly and negligently. The petitioner was pillion rider on scooter No. UMS 5358 of Sri Ajai Mohan Nautiyal. He was going to Dehradun from the side of Uttarkashi. At the place in between Narendra Nagar to Agrakhal when Ajai Mohan Nautiyal saw the aforesaid Police Ambulance

coming speedily and rashly towards him, he stopped his scooter at the extreme left side of the road. The driver of the Ambulance could not control the Ambulance and struck against the stationery scooter. As a result of impact the petitioner sustained serious injuries. His right leg almost severed from below the knee. The petitioner remained under the treatment in private nursing home from 2.2.1990 to 19.3.1990. He was 38 years of age at the time of accident and was working as Assistant Logging Instructor, Forest Operation Division, Cable Ways Centre, Forest Research Institute, Gyansu, Uttarkashi. He was diploma holder in mechanical engineering. His pay scale was Rs. 2828/- per month at the time of accident.

3- The opposite party contested the claim petition by filing written statement denying all the allegations of the claim petition. It was also stated that the driver of Ambulance was driving the vehicle on the correct side of the road but due to the rash and negligent driving of the scooter, the same dashed against the backside of the departmental vehicle for no fault of the departmental driver. On the pleadings of the parties, the Tribunal framed the necessary issues and after recording evidence adduced by the parties, decreed the claim petition of the injured claimant accordingly.

4- The learned counsel for the appellant-State of U.P challenged the appeal on the ground that the alleged accident took place due to rash and negligent driviving of the scooter by Ajai Mohan Nautiyal in utter disregard of the rules of the road and safety of life in which the petitioner, who was pillion rider, received injuries. In the claim petition the person who was driving the scooter was not impleaded as party. Hence the claim petition was bad for non-joinder of necessary party. The Tribunal fell into error

in fixing the liability to pay the compensation to the appellant –State of U.P.

5- We have gone through the entire material on record and perused the impugned judgment. The learned Tribunal while deciding issues gave its finding that the petitioner has filed copy of F.I.R. which shows that the Police Ambulance was being driven by its driver rashly and negligently. The said F.I.R. was lodged at P.S. Narendranagar on 3.2.1990 at 17.40 hrs. and case was registered against the driver of the said police vehicle. After investigation, chargesheet was also submitted against the driver of said Police Ambulance. This fact was also admitted by the driver of the said Ambulance Sri Ganesh Prasad Bahuguna in his statement on oath as DW1 before the Tribunal. The Photograph of the scooter which was filed as paper No. 57-C before the Tribunal shows that Police Ambulance had dashed the scooter on its right side towards which there is engine of the scooter. It further shows that the scooter was standing on the left side of the road. There is no damage of any kind to the front part of the scooter. If the driver of the scooter was driving the scooter rashly and negligently, then the said fact could also come in light during the investigation. The F.I.R. of the incident was lodged by Sri Ajay Mohan Nautiyal, the driver of the scooter and not by the driver of the Police Ambulance. We find that after appreciation of all these oral and documentary evidence the learned Tribunal has rightly held that the accident occurred due to rash and negligent driving of the Police Ambulance by its driver and not by the rash and negligent driving of the driver of the scooter and rightly held the liability on the appellant. In our opinion, it was not necessary to implead the driver of the scooter as party in the claim petition because the F.I.R. was lodged

only against the driver of Police Ambulance and in the police investigation also the driver of the Police Ambulance was held liable for accident. However, nothing has been shown to us on behalf of the appellant-State of U.P. so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal. Accordingly the appeal fails on merit.

6- The appeal is dismissed. The impugned judgment and award dated 16.12.1997 is affirmed. No order as to costs. The amount deposited by the appellant in this appeal shall be remitted to the Motor Accident Claims Tribunal concerned within a period of two months from today.

(B.S. Verma,J.) **(P.C. Verma,J.)**

P.Singh